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21 Corp.

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23 UNITED STATES DISTRICT COURT

24 DISTRICT OF NEVADA

25 ORACLE USA, Inc., a Colorado corporation;
26 ORACLE AMERICA, INC., a Delaware
27 corporation; and ORACLE INTERNATIONAL
28 CORPORATION, a California corporation,

Plaintiffs,

v.

RIMINI STREET, INC., a Nevada corporation;
and SETH RAVIN, an individual,

Defendants.

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Case No. 2:10-cv-0106-LRH-PAL

**STIPULATED DISCOVERY PLAN &
PROPOSED SCHEDULING ORDER
PURSUANT TO FED. RS. CIV. P. 26(f) &
16(B); AND D. NEV. L.R. 26-1**

**SPECIAL SCHEDULING REVIEW
REQUESTED**

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1 The named plaintiffs (collectively, “Oracle”) and the named defendants (collectively,
 2 “Rimini”) (all parties collectively, “Parties,” any party, “Party”) have met and conferred pursuant
 3 to Federal Rules of Civil Procedure 26(f) and 16(b), and D. Nev. Local Rule 26-1, and propose
 4 the following discovery plan and proposed scheduling order. All proposals are joint, except
 5 where indicated.

6 **1. Statement of Reasons Supporting Deviation From Local Rule 26-1(e)**

7 Local Rule 26-1(d) provides that the parties shall submit a statement of reasons why
 8 longer or different time periods should apply to the case if proposing any deviations from Local
 9 Rule 26-1(e). The Parties’ proposals, below, set a schedule that is different in some respects
 10 from the provisions of Local Rule 26-1(e). The Parties believe this proposal is appropriate
 11 because this case will likely be complex and will require substantial fact and expert discovery.
 12 The Parties do not, however, agree on the amount of discovery that should be permitted, or the
 13 time necessary to complete discovery – in short, Oracle believes that the case will require more
 14 discovery and more time than Rimini does.

15 **Plaintiffs’ Statement of Reasons for Deviation From Local Rule 26-1(e)**

16 Rimini holds itself out as a competitor to Oracle in providing software support services to
 17 companies that license certain Oracle enterprise software applications. In its Amended
 18 Complaint, Oracle contends that Rimini’s business is built on systematic theft of Oracle’s
 19 intellectual property, including illegal downloading of Oracle’s copyrighted software and support
 20 materials, such as software applications and environments, updates, bug fixes, and
 21 documentation. Oracle contends that Rimini typically logs on to Oracle’s password-protected
 22 technical support websites using a customer credential, then downloads Oracle material in excess
 23 of the customer’s authorization under its license agreement, and Rimini has admitted to
 24 downloading “tens of thousand files for a single customer.” Oracle asserts that Rimini also
 25 acquires copies of Rimini’s customers’ licensed Oracle enterprise applications software and
 26 makes illegal copies of this software. Oracle claims that Rimini then uses those copies in various
 27 illegal ways to offer artificially low-cost support services and to induce Oracle’s customers to
 28 cancel their support contracts with Oracle in favor of Rimini.

1 Based on those allegations, Oracle has asserted thirteen claims against Rimini: (1)
 2 copyright infringement; (2) violations of the Federal Computer Fraud & Abuse Act; (3)
 3 violations of the California Computer Data Access & Fraud Act; (4) violations of Nev. Rev. St.
 4 205.4765 (pled in the alternative); (5) breach of contract; (6) inducing breach of contract; (7)
 5 intentional interference with prospective economic advantage; (8) negligent interference with
 6 prospective economic advantage; (9) unfair competition; (10) trespass to chattels; (11) unjust
 7 enrichment / restitution; (12) unfair business practices; and (13) an accounting.

8 Rimini responded to that Amended Complaint on May 6, 2010 by answering the claims
 9 of copyright infringement and breach of contract and moving to dismiss Oracle's other claims.
 10 Rimini has also filed three counterclaims against Oracle, for defamation, copyright misuse, and
 11 violations of California's Unfair Competition Law. Oracle filed a motion to dismiss those
 12 counterclaims on May 7, 2010. Thus, this case involves numerous claims, the pleadings are not
 13 yet settled, and they may not be settled in the near future.

14 Putting aside the issue of settling the pleadings in this case, this case will require
 15 extensive fact and expert discovery, including extensive discovery of complex data, software
 16 code, software development, and computer processes. Oracle's recent experience litigating
 17 nearly identical claims against SAP AG and defendant Seth Ravin's prior company,
 18 TomorrowNow, Inc., demonstrates that the discovery required in this case will be very
 19 substantial, and cannot be accomplished within the time frame or limits contemplated by Local
 20 Rule 26-1(e). Oracle's experience is that it is time-consuming to identify, retrieve, and produce
 21 the technical data concerning downloading, copying, and development of software. It is still
 22 more time consuming to take the discovery necessary for an adverse party to understand that
 23 technical data and for its experts to complete their analyses of it. These tasks cannot be
 24 accomplished efficiently within the time frame proposed by Rimini nor with the number of
 25 depositions and interrogatories Rimini proposes.

26 In March 2007, Oracle filed a lawsuit against SAP AG and TomorrowNow, Inc. alleging
 27 that TomorrowNow, Inc. – and SAP once it acquired TomorrowNow – accessed Oracle's
 28 customer support websites in violation of the terms of use and license agreements, downloaded

1 copyrighted works to which they were not entitled, and distributed illegal copies and derivative
 2 works to their own support customers. *Oracle, Inc. et al. v. SAP AG, et al.*, Civil Action No. 07-
 3 CV-1658 (N.D. Cal.) (“SAP/TomorrowNow Lawsuit”). Oracle’s complaint against Rimini
 4 Street alleges that Rimini Street and TomorrowNow exploited the same unlawful business model
 5 based on comparable if not identical methods of systematic copyright violations.

6 The SAP/TomorrowNow Lawsuit is set for trial in November 2010, more than three and
 7 a half years after the original filing. The Court twice granted stipulated extensions to both the
 8 discovery schedule and the amount of discovery in the SAP/TomorrowNow Lawsuit in light of
 9 the scope of the claims and the complexity and volume of the underlying discovery. Fact
 10 discovery lasted from July 26, 2007 until December 4, 2009, with six months of expert discovery
 11 thereafter. In the course of that lawsuit, Oracle has produced over 382 gigabytes of documents
 12 and data, corresponding to approximately 776,263 pages. This does not include expert and
 13 software productions estimated to be over a terabyte and another 400 gigabytes to a terabyte of
 14 data, respectively. Oracle’s employees have appeared for over 225 hours of deposition. Oracle
 15 has responded to 127 interrogatories, 127 requests for production, and 915 requests for
 16 admissions. In addition to what Oracle itself has produced, the defendants in the
 17 SAP/TomorrowNow Lawsuit have produced over a terabyte of traditional documents and data,
 18 corresponding to approximately 11,256,983 pages. The SAP/TomorrowNow defendants also
 19 produced over ten terabytes (14 million files) of enterprise software environments and
 20 downloads of Oracle software and support materials, consisting of the proprietary software code
 21 that those defendants stole from Oracle – a time-consuming and complicated production, which
 22 takes a significant amount of time to analyze. Oracle has taken 450 hours of deposition and
 23 propounded 124 interrogatories, 147 requests for production, and 1285 requests for admissions.
 24 Oracle designated six testifying experts; defendants in the SAP/TomorrowNow Lawsuit
 25 designated eight.

26 It bears emphasis that discovery in the SAP/TomorrowNow Lawsuit was closely
 27 supervised and limited by the court. Rimini argues that discovery in that case was “over the
 28 top,” and tries to find support in an order from Magistrate Judge Laporte. In fact, however, that

1 order *denied* requested discovery to prevent discovery from *becoming* “onerous and prohibitively
 2 expensive.” *Oracle Corp. v. SAP AG*, C-07-01658 PJH (EDL), 2008 U.S. Dist. LEXIS 88319,
 3 *7 (N.D. Cal. July 3, 2008). The extensive discovery in the SAP/TomorrowNow Lawsuit
 4 described above was what the court determined to be appropriate.

5 The following chart illustrates the differences between Oracle’s actual experience in the
 6 SAP/TomorrowNow Lawsuit, the more limited schedule and scope of discovery that Oracle
 7 proposes here, and the still narrower schedule and scope of discovery that Rimini proposes here.

9	Discovery per side	SAP/TomorrowNow Lawsuit	Oracle Proposal in this case	Rimini Proposal in this case
10	Deposition hours (fact witnesses)	450	200	165
11	Interrogatories	127	75	50
12	Requests for Admission	1,285	100	100
13	Requests for Production	147	No limit	No limit
	Time for Fact Discovery	28 months	15 months	12 months
	Time for Expert Discovery	6 months	6 months	3 months

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Rimini apparently recognizes that the scope of discovery in this case must be as extensive
 as that of the SAP/TomorrowNow Lawsuit, as it has asked for deposition transcripts, written
 discovery, and expert reports in the SAP/TomorrowNow Lawsuit.¹ Rimini has also served 95
 other document requests on Oracle, the vast majority of which seek “all documents relating to”
 broad subjects.²

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Given the relationship between the conduct alleged in the SAP/TomorrowNow Lawsuit

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¹ Rimini’s request seeks “Pleadings, deposition transcripts, hearing transcripts, orders, settlement
 documents, written discovery, expert reports, declarations, and any supporting papers from the
 litigation captioned *Oracle USA, Inc., et al. v. SAP AG., et al.*, Civil Action No. 07-CV-1658
 (Northern District of California).”

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² As one example, Rimini has requested “All documents relating to any analysis of the market
 for third party software maintenance and support services for Oracle’s PeopleSoft, J.D. Edwards,
 and Siebel families of software products, including, without limitation, any Oracle analysis of the
 market for maintenance and support services, the potential market for maintenance and support
 services, the demand for such services, and any competitive analysis of past or existing third
 party support vendors from January 1, 2004 to the present.”

1 and this lawsuit, as well as the close relationship between the defendants in these two lawsuits,
 2 Oracle expects that some of this past discovery will be useful to the present litigation. However,
 3 much of the conduct at issue in Oracle's Amended Complaint post-dates the document
 4 collections and the close of fact discovery in the SAP/TomorrowNow Lawsuit. Moreover,
 5 different downloads, products, services, and customers are at issue as well. Among other
 6 matters, in this case Oracle will need to take new discovery concerning Rimini's access to
 7 Oracle's intellectual property through Oracle's website and other means, Rimini's copying of
 8 Oracle's intellectual property, what safeguards Rimini has to prevent the misuse of Oracle's
 9 intellectual property, Rimini's communications with customers and other third parties, Rimini's
 10 development of updates, patches, fixes, and other software and support materials for Oracle
 11 support customers, and Rimini's financial projections, revenues, and costs. Further, Rimini has
 12 asserted affirmative defenses and counterclaims that the defendants in the SAP/TomorrowNow
 13 Lawsuit did not assert. For all of these reasons, the discovery in the SAP/TomorrowNow
 14 Lawsuit is a benchmark, not a substitute, for the discovery that will be required here.

15 Unfortunately, experience in the SAP/TomorrowNow Lawsuit belies Defendants' claims
 16 that discovery in this case can be wrapped up quickly. In the SAP/TomorrowNow Lawsuit,
 17 Oracle served Rule 45 subpoenas on Mr. Ravin in February 2009 and on Rimini Street in May
 18 2009. Both resisted discovery, and Oracle filed a motion to compel in this Court. That motion
 19 to compel was granted by Magistrate Judge Foley on October 13, 2009; Mr. Ravin and Rimini
 20 Street sought reconsideration, which Judge Dawson denied on November 25, 2009. Mr. Ravin
 21 and Rimini Street stipulated to a finding of contempt rather than comply with the order, and filed
 22 an appeal to the United States Court of Appeals for the Ninth Circuit on January 21, 2010. Mr.
 23 Ravin and Rimini Street then voluntarily dismissed that appeal on March 25, 2010; and Mr.
 24 Ravin and Rimini Street agreed that they would comply with Magistrate Judge Foley's October
 25 2009 order by producing Mr. Ravin for two hours of deposition on July 21, 2010. In short, the
 26 judicial process leading to Mr. Ravin's two-hour deposition took 17 months, which is five
 27 months longer than what Rimini proposes for the entirety of fact discovery in this case.

28 Accordingly, as set out in greater detail below, Oracle proposes a fact discovery period of

1 fifteen months, followed by six months of expert discovery. Oracle proposes that fact
 2 depositions be limited to 200 hours per side, interrogatories be limited to 75 per side, and
 3 requests for admissions be limited to 100 per side. In every respect, discovery under this
 4 proposal is significantly narrower than that in the SAP/TomorrowNow Lawsuit.

5 Rimini Street's suggestion that Oracle's proposal represents a "scorched earth" tactic is
 6 belied by the relatively narrow gap between the Parties' proposals. As to the extent of discovery,
 7 Oracle is only suggesting 35 more hours of deposition and 25 more interrogatories than what
 8 Rimini proposes. Those depositions and interrogatories are necessary, as described above, due to
 9 the complexity of the technical issues in this case. Moreover, Rimini's proposal to
 10 compartmentalize deposition time arbitrarily into 15 individual depositions, 15 hours of 30(b)(6)
 11 depositions, and 45 hours of third party depositions would deny the parties the flexibility to use
 12 deposition time in whatever way would be most efficient.

13 Oracle also proposes three months more than Rimini Street to complete fact discovery,
 14 which would reduce total costs by facilitating a more orderly process. Rushing to squeeze the
 15 same amount of discovery into a shorter period risks inefficiency, waste, and expense. There is
 16 nothing to be gained by haste, particularly if a short schedule leaves the parties likely back
 17 before the Court requesting an extension.

18 Likewise, Oracle proposes three months more than Rimini Street to conduct expert
 19 discovery. Oracle's experience in the SAP/TomorrowNow Lawsuit teaches that expert analysis
 20 of complex data such as log files, computer code, and software development processes is time-
 21 intensive. There additional months to complete that same work would not place any greater
 22 burden on the parties.

23 **Defendants' Statement of Reasons for Deviation From Local Rule 26-1(e)**

24 While Oracle attempts to justify its discovery proposals by referencing the over-the-top
 25 discovery in the SAP/TomorrowNow Lawsuit, that case involved two giant software companies,
 26 not a start-up company such as Rimini Street. Though Rimini Street has proposed a schedule
 27 and discovery scope far beyond normal, Oracle wants even more. Oracle's request is designed to
 28 promote a scorched earth approach to this litigation -- an approach that leverages its superior size

1 and resources. Indeed, Oracle has over 100,000 employees, while Rimini Street has
 2 approximately 160 employees. Given the vastly different resources of the parties, it is important
 3 that this case be determined on the *merits*, not by the ability of Oracle to use the *process* to bury
 4 Rimini Street. To that end, the Court's control over this litigation at this early stage is critical.

5 Both Parties agree this case will require substantial fact and expert discovery, but
 6 Oracle's discovery proposals do not provide sufficient limitations on discovery, leaving the door
 7 open for discovery abuses such as those that have plagued the SAP/TomorrowNow Lawsuit.
 8 Commenting on the manner in which the parties conducted discovery in that case, the
 9 SAP/TomorrowNow Court warned against engaging in "exorbitantly costly litigation where the
 10 process of discovery becomes so onerous and prohibitively expensive that it no longer facilitates
 11 resolution on the merits as a means to an end, but dominates and derails the litigation process."
 12 *Oracle Corp. v. SAP AG*, C-07-01658 PJH (EDL), 2008 U.S. Dist. LEXIS 88319, *7 (N.D. Cal.
 13 July 3, 2008) (rejecting Oracle's request in the SAP/TomorrowNow litigation for "discovery of
 14 165 custodians . . . [which] would cost the staggering sum of \$16.5 million – on top of other
 15 discovery costs from searches of centralized repositories and targeted searches, not to mention
 16 lay and expert depositions and interrogatories."). Seeking to avoid a repeat of such "onerous and
 17 prohibitively expensive" discovery in this case, Rimini Street's discovery proposals, while
 18 permitting discovery that far exceeds that of a typical case, are aimed at preventing unnecessarily
 19 burdensome or prolonged litigation. While Oracle may profess every intent to manage this
 20 litigation efficiently, the SAP/TomorrowNow litigation tells a different story. A review of
 21 Oracle's discovery chart (above – demonstrating 450 hours of depositions, 127 interrogatories,
 22 etc.) is telling. The Court, here, must place reasonable limits on both the duration of this case,
 23 and the amount of discovery available to the parties.

24 Specifically, Rimini Street proposes a fact discovery period of twelve months, followed
 25 by three months of expert discovery. Such a timeframe for discovery is *over nine months longer*
 26 than a typical case contemplated by the Local Rules. Oracle simply should not need more than a
 27 year to explore its claims in this case. Extending discovery for more than a year at best promotes
 28 inefficiency and, at worst, opens the door to a strategy of attrition. Rimini Street further

1 proposes that interrogatories be limited to 50 per side. Rimini Street's proposal *doubles* the
 2 typical number of interrogatories that a party may propound. Finally, Rimini Street proposes up
 3 to 165 hours of deposition testimony, segmented as follows: 15 personal depositions (limited to 7
 4 hours or as the parties otherwise agree); 15 hours of Rule 30(b)(6) corporation testimony; and 45
 5 hours of third party deposition time, all excluding expert deposition time. Here again, Rimini
 6 Street's proposal far surpasses the number of depositions permitted in a typical case.
 7 Furthermore, Rimini Street appropriately provides limitations on the number of personal
 8 depositions, as well as the number of hours that may be allotted to corporation and third party
 9 testimony. For example, Oracle's unfettered approach to depositions (i.e., a bare limit of 200
 10 hours) is enough to allow Oracle to depose every single Rimini Street employee for an hour and
 11 still have approximately 40 hours left for third party depositions. By comparison, Rimini
 12 Street's proposal limits the number of depositions to 15 personal depositions of Rimini Street
 13 employees, while still allowing for an additional 15 hours of corporate testimony under Rule
 14 30(b)(6). Rimini Street's proposal provides at least 165 hours of deposition time, while
 15 implementing reasonable controls designed to prevent abuse. In sum, Rimini Street's proffered
 16 schedule and limitations are more than adequate to allow full discovery into the merits of the
 17 claims in this case, while still placing a reasonable degree of control on the case.

18 **2. Initial Disclosures Per FRCP 26(a)**

19 The Parties have agreed to exchange initial disclosures pursuant to Rule 26(a)(1) by
 20 Tuesday, May 25.

21 **3. Subjects on Which Discovery Will Be Required (FRCP 26(f)(3)(B))**

22 The Parties anticipate that fact and/or expert discovery will be required for the subject
 23 matter set forth below. Neither Oracle nor Rimini, however, waives the right to object to
 24 discovery requests within these subject matters on proper bases.

25 - Rimini's knowledge of and agreement to the terms of Oracle's license agreements
 26 and terms of use

27 - Rimini's accessing of Oracle's web sites

28 - Rimini's use of automated tools to access Oracle's web sites

1 - Rimini's accessing and use of Oracle's copyrighted works

2 - Rimini's copying and use of Oracle's copyrighted works

3 - Rimini's use of automated tools to copy Oracle's copyrighted works

4 - Rimini's processes, procedures, and policies to assure the proper use of Oracle's

5 intellectual property and to safeguard against the improper use of those materials

6 - Rimini's development of updates, patches, fixes, and other software and support

7 materials for Oracle support customers

8 - Rimini's cost of providing support, including updates, patches, fixes, other

9 software and support materials, for Oracle support customers

10 - Rimini's provisioning of updates, patches, fixes, and other software and support

11 materials to Oracle support customers

12 - the experience and qualifications of Rimini's support personnel

13 - Rimini's communications with prospective and actual customers

14 - Rimini's communications with Oracle

15 - the identity of Rimini's Oracle support customers

16 - revenues that Rimini has obtained from Oracle support customers

17 - damage to Oracle's computers caused by Rimini's conduct

18 - damages, including lost revenue, to Oracle caused by Rimini's conduct

19 - Seth Ravin's knowledge of, and participation in, Rimini Street Inc.'s conduct as

20 alleged by Oracle

21 - public statements by Oracle employees concerning Rimini's practices and the

22 harm caused by these statements

23 - Rimini's reputation in the relevant community for lawful or unlawful practices

24 As discussed in the proposed schedule below, the Parties agree that fact discovery should

25 be conducted and concluded first, followed by expert discovery.

26 To ensure that discovery is as efficient as possible, each Party will serve focused

27 interrogatories and requests for production concerning matters (such as corporate organization,

28 computer network systems and architecture, practices for safeguarding intellectual property, etc.)

1 that the Party believes will assist it narrowing and specifying the remainder of fact discovery.
 2 These initial requests will be drafted with the understanding that, subject to any proper
 3 objections, each Party commits to provide objections and substantive responses within 30 days of
 4 the requests, and to produce responsive documents within 45 days of requests for production.
 5 The Parties will then schedule and take Rule 30(b)(6) depositions related to these topics in the
 6 thirty days following the initial responses. The Parties also may serve additional discovery
 7 requests at any time, and the timing of responses to those requests would not be covered by the
 8 agreement described above. On April 29, 2010, Oracle served its First Set of Interrogatories and
 9 First Set of Requests for Production in furtherance of these goals.

10 The parties are discussing additional issues regarding preservation of documents and data
 11 and, if the parties are unable to reach agreement, will present the issue to the Court for
 12 resolution.

13 **4. Issues About Disclosure or Discovery of Electronically Stored Information
 14 (FRCP 26(f)(3)(C))**

15 The Parties have been discussing document preservation and production issues, and are
 16 still working on resolving those issues. In the meantime, however, the Parties have agreed that:

17 Searches for responsive documents, and productions thereof, may be prioritized by
 18 particular custodians, with the party seeking production having the right to set the priority of
 19 certain custodians over others.

20 Insofar as possible (or unless requested in the form produced in another legal
 21 proceeding), the Parties shall produce documents in "tiff" format along with the following
 22 metadata fields: (1) Beginning Bates Number, (2) Ending Bates Number (3) Beginning
 23 Attachment Number, (4) Ending Attachment Number (5) Document Type, (6) Date Sent, (7)
 24 Date Received (8) Date Modified, (9) Date Created, (10) Custodian, (11) Author/Sender, (12)
 25 Recipient(s), (13) CC, (14) BCC, (15) Title/Subject, and (16) Filename. Documents should be
 26 represented in a Concordance load file, with page level TIFFs associated in an Opticon load file.
 27 To the extent OCRed text is provided, it should be document level text.

28 Excel spreadsheets, and similar materials that require native format to be reasonably

1 usable, shall be produced in native format unless redaction issues make it infeasible to do so.

2 As noted above, Oracle contends that Defendants have unlawfully accessed Oracle's
3 websites to access and download copyrighted software and support materials, which Defendants
4 have then used to create further unauthorized copies and derivative works, some of which in turn
5 include software code that infringes Oracle's copyrighted work. Consequently, in addition to
6 other discovery, Oracle anticipates that this case will require extensive discovery of Defendants'
7 computer systems, networks, servers, software development environments, and software
8 development processes. The Parties, with the assistance of experts, will attempt to reach
9 agreement on appropriate measures to ensure that relevant information from Defendants'
10 computer systems are preserved and produced in a format that can be examined, tested, and
11 analyzed by the Parties' respective consulting and testifying experts.

12 **5. Protective Order**

13 The Parties have agreed to meet and confer regarding a protective order, and to propose
14 an order to the Court by May 17, 2010, as set forth below.

15 **6. Privilege for Trial Preparation Materials (FRCP 26(f)(3)(D))**

16 The Parties agree that for document production purposes, each producing party will have
17 45 days from the date each production is concluded to produce a privilege log. The Parties
18 further stipulate out of the privilege-log requirements of *Burlington Northern & Santa Fe Ry. Co.*
19 *v. District Court*, 408 F.3d 1142, 1149 (9th Cir. 2005) and instead agree that:

20 Privilege logs produced within 45 days of the completion of the production of documents
21 in response to a particular request are enough to preserve privilege;

22 Privilege logs shall state, to the extent that it can be ascertained, (1) an identifying
23 number or designation (2) the length of the document; (3) the date of the document, (4) the title
24 or description of the document sufficient to justify the assertion of privilege, (5) the author(s) of
25 the document, (6) all recipients of the document (including blind copied recipients), and (7) the
26 nature of the privilege asserted. Each Party shall furnish, with the privilege log, a list of all
27 persons identified on the log who were not employees of that Party at the time of the relevant
28 communication, with a brief description of that person's relevant role (e.g., outside counsel, staff

1 of outside counsel, etc.) sufficient to justify the assertion of privilege as to that person.

2 The parties agree that communications with outside counsel need not be logged. The
3 parties are discussing whether other categories of communications should be logged and, if
4 agreement cannot be reached, may present the issue for resolution at a later date.

5 **7. Limitations on Discovery**

6 The Parties agree that there should be no limit on the number of requests for production
7 of documents, and that each side shall be limited to 100 requests for admission. The Parties
8 expect to meet and confer to resolve questions concerning authenticity and admissibility of
9 documents, and do not intend to use RFAs for this purpose. The Parties have not reached
10 agreement on limits for other areas of discovery, and their respective positions are set out below.

11 **Plaintiffs' Proposal**

12 As noted above in paragraph 1, the discovery that Oracle proposes in this case is more
13 limited than what was necessary in the SAP/TomorrowNow Lawsuit, but more extensive than
14 Rimini proposes:

Discovery per side	SAP/TomorrowNow Lawsuit	Oracle Proposal in this case	Rimini Proposal in this case
Deposition hours (fact witnesses)	450	200	165
Interrogatories	127	75	50
Requests for Admission	1,285	100	100
Requests for Production	147	No limit	No limit
Time for Fact Discovery	28 months	15 months	12 months
Time for Expert Discovery	6 months	6 months	3 months

21 **Depositions**

22 Each side may conduct 200 hours, maximum, of deposition questioning. This will be
23 measured as time "on the record." This shall include each Party's questioning of fact witnesses,
24 FRCP 30(b)(6) witnesses, and third-party witnesses, but not witnesses designated as experts.

25 Oracle anticipates that it may be necessary to depose some of Rimini's software
26 developers in their individual capacities for more than seven hours, as a result of the technical
27 nature and specialized vocabulary of the subject matter. The parties will meet and confer to try
28

1 to reach agreement for such depositions on a case by case basis.

2 Nothing in these deposition limitations shall be construed to impede a Party's right to
3 seek a protective order on terms otherwise provided for under the FRCP.

4 Any Party has right to depose any person designated as a trial witness by another Party, if
5 that person was not deposed previously. This provision however does not constitute a waiver of
6 any Party's right to seek to exclude a witness from trial for a failure of another Party to disclose
7 the person as required under FRCP 26(a), or in response to other discovery, or as otherwise
8 required.

9 Interrogatories

10 Each side may propound up to 75 interrogatories. Interrogatories that are withdrawn by
11 the propounding party before a substantive response is served do not count against the limit of
12 75. Nothing in this agreement shall be construed to impede a Party's right to seek a protective
13 order on terms otherwise provided for under the FRCP.

14 **Defendants' Proposal**

15 Depositions

16 Each side may conduct 165 hours, maximum, of deposition questioning, segmented as
17 follows: 15 personal depositions (limited to 7 hours or as the parties otherwise agree); 15 hours
18 of Rule 30(b)(6) corporation testimony; and 45 hours of third party deposition time. The hourly
19 limitations will be measured as time "on the record." This shall include each Party's questioning
20 of fact witnesses, FRCP 30(b)(6) witnesses, and third-party witnesses, but not witnesses
21 designated as experts. Nothing in these deposition limitations shall be construed to impede a
22 Party's right to seek a protective order on terms otherwise provided for under the FRCP.

23 Any Party has the right to depose any person designated as a trial witness by another
24 Party, if that person was not deposed previously. This provision however does not constitute a
25 waiver of any Party's right to seek to exclude a witness from trial for a failure of another Party to
26 disclose the person as required under FRCP 26(a), or in response to other discovery, or as
27 otherwise required.

28 Interrogatories

1 Each side may propound up to 50 interrogatories. Interrogatories that are withdrawn by
 2 the propounding party before a substantive response is served do not count against the limit of
 3 75. Nothing in this agreement shall be construed to impede a Party's right to seek a protective
 4 order on terms otherwise provided for under the FRCP.

5 **8. Scheduling**

6 The Parties are unable to reach agreement on the schedule for the case. Our respective
 7 positions, informed by the considerations described in paragraph 1 above, are set out below.

8 **Plaintiffs' Proposal**

9 As noted above, Oracle proposes 15 months for fact discovery followed by six months of
 10 expert discovery. Given the extent of the discovery in the SAP/TomorrowNow Lawsuit, the time
 11 it took to collect, produce, and analyze that discovery, and the necessary scope of additional
 12 discovery in this case, Oracle's proposal is a reasonable one.

13 Accordingly, Oracle proposes that the following schedule shall govern this case.

14 Deadlines for close of discovery refer to the last possible response date for a discovery request,
 15 not the last day on which requests may be served.

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17 PLAINTIFFS' PROPOSED DATE	18 EVENT
19 5/17/2010	20 File joint proposed protective order and submit any disputes.
21 5/25/2010	22 Exchange Rule 26(a) disclosures, subject to protective order having been 23 signed by the Court.
24 6/1/2011	25 Deadline to amend pleadings and add new parties – 60 days before close 26 of fact discovery* 27 *The Parties' stipulation to this deadline shall not waive any objections to the propriety of another Party's pleading amendments
28 6/1/2011	29 File "interim status report" per LR 26-3 – 60 days before close of fact discovery

1	PLAINTIFFS' PROPOSED DATE	EVENT
2	8/1/2011	Close of fact discovery The first defendant made an appearance in this case on February 1, 2010; the Parties have agreed fact discovery should last approximately fifteen months, starting in late April 2010, and expert discovery should last six months, beginning in August 2011
3	8/1/2011	Identify experts on issues for which a Party has the burden of proof
4	8/15/2011	Last day to file motions to compel related to fact discovery
5	9/15/2011	Experts disclosures on issues for which a Party has the burden of proof
6	11/1/2011	Disclosure of experts on rebuttal
7	12/1/2011	File “interim status report” per LR 26-3 – 60 days before close of expert discovery
8	2/1/2012	Close of expert discovery
9	2/15/2012	Last day to file motions to compel related to expert discovery
10	3/1/2012	Last day to file dispositive motions – 30 days after close of expert discovery
11	30 days before start of trial	Motions in limine due; file joint pretrial order, including all requirements of FRCP 26(a)(3) and LR 16-3(c)
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21 **Defendants' Proposal**

22 As noted above, Rimini Street proposes 12 months for fact discovery followed by
23 3 months of expert discovery. While far exceeding the schedule of a typical case, Rimini
24 Street's proposed schedule seeks to avoid unnecessarily prolonged litigation. Accordingly,
25 Rimini Street proposes that the following schedule shall govern this case. Deadlines for close of
26 discovery refer to the last possible response date for a discovery request, not the last day on
27 which requests may be served.

1	DEFENDANTS' PROPOSED DATE	EVENT
2	5/17/2010	File joint proposed protective order and submit any disputes.
3	5/25/2010	Exchange Rule 26(a) disclosures.
4	2/28/2011	Deadline to amend pleadings and add new parties – 60 days before close of fact discovery
5	4/29/2011	Close of fact discovery
6	5/29/2011	Disclosure of experts on issues for which a Party has the burden of proof
7	5/29/2011	File “interim status report” per LR 26-3 – 60 days before close of discovery
8	6/29/2011	Disclosure of experts on rebuttal
9	7/29/2011	Close of expert discovery
10	8/29/2011	Last day to file dispositive motions – 30 days after close of expert discovery
11	9/29/2011	File joint pretrial order, including all requirements of FRCP 26(a)(3) and LR 16-3(c)
12	30 days before the start of trial	Motions in limine due.
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